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5 IN THE UNITED STATES DISTRICT COURT
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 EUREKA DIVISION
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1314 FLORIDALMA ALVAREZ,
15 YOURI BEZDENEJNYKH,

16 No. CV 10-1071 NVJ

17 Plaintiffs,

18 **ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS** (Docket No. 22)19 v.
2021 LAKE COUNTY BOARD OF SUPERVISORS,
22 et al.,23 Defendants.
2425 Plaintiffs Floridalma Alvarez and Youri Bezdenejnykh filed their complaint on March 12,
26 2010, against Defendants Lake County Board of Supervisors, Lake County, Lake County Code
27 Enforcement Manager (i.e., Manager of the County's Code Enforcement Division) Voris Brumfield
in her individual and official capacity, and Director of Lake County Community Development
Department Richard Coel in his individual and official capacity.¹ Compl. ¶ 29 & Ex. J (Doc. No. 1);
Def. ' Request for Judicial Notice ("RJN"), Exs. 9 & 11 (Doc. Nos. 26-11 & 26-13). The Court
granted Plaintiffs' motion for leave to proceed *in forma pauperis* ("IFP"), but did not address
whether the complaint should be dismissed under 28 U.S.C. § 1915. (Doc. No. 12) The parties
consent to the jurisdiction of this Court pursuant to 28 U.S.C. § 636(c). (Doc. Nos. 6 & 21)
Defendants now move to dismiss the complaint, or alternatively, move for a more definite statement
under Federal Rule of Civil Procedure 12(e). (Doc. No. 22) Plaintiffs have filed their opposition
and Defendants have filed their reply. (Doc. Nos. 30 & 36) The parties also submitted
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1 The complaint also refers to Defendant Coel as the Director of the Lake County Planning
Department, but it appears that Defendant Coel's correct title is Community Development Director. See
Compl. ¶ 29; Defs.' RJN, Ex. 11.

1 supplemental briefing as required by the Court. (Doc. Nos. 40 & 44) Having considered the
2 arguments of the parties and the papers submitted, and for good cause shown, the Court **grants in**
3 **part and denies in part** Defendants' motion.

4 **I. BACKGROUND**

5 Plaintiffs owned, but no longer currently own, property located at 10865 Pine Point Road in
6 Cobb, California.² Compl. ¶ 6; Defs.' RJD, Ex. 1; Pls.' Opp. at 5 (conceding that Plaintiffs returned
7 the underlying property to the seller). This action is based on Defendant Lake County Board of
8 Supervisors' denial of Plaintiffs' building permit to build a home on their property and the Board's
9 order to abate the nuisance requiring Plaintiffs to remove personal property and a storage facility on
10 this property. Plaintiffs raise the following claims: (1) due process violations; (2) violation of the
11 federal Fair Housing Act, 42 U.S.C. § 3604, for discrimination based on a handicap; (3) violation of
12 Plaintiffs' right to "essential use of land;" (4) taking private property without just compensation,
13 which resulted from Defendants' order to remove and dispose of Plaintiffs' building materials and
14 personal property; (5) violation of Plaintiffs' rights under "land patent law;" (6) request for an order
15 of cease and desist; and (7) intentional infliction of emotional distress. *See* Compl. ¶¶ 31-69.
16 Plaintiffs also request that the Court prohibit Defendants from taking their property and demolishing
17 Plaintiffs' building. Compl. ¶ 67. Though difficult to understand, it appears that Plaintiffs' due
18 process claim is based on allegations that Defendant Board improperly functioned as a court in
19 denying the building permit and issuing a nuisance order; California state judges are corrupt and
20 therefore, this action could not be filed in state court; Plaintiffs were entitled to a jury trial because
21 Defendants Board and County's decisions determined Plaintiffs' legal rights, but Plaintiffs' right to
22 a jury was violated; and that the California Uniform Building Code is vague because it does not
23 identify what buildings are regulated by the code. Compl. ¶¶ 17, 23, 32, 37, 38, 43-44. The Court
24 interprets the complaint to allege only state law claims against Defendants Brumfield and Coel
25 because the complaint does not raise allegations against either individual Defendant in its federal
26 due process or Fair Housing Act claims.

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28 ² Defendants have requested that the Court take judicial notice of documents establishing
that Plaintiffs no longer own the underlying property, which is discussed in further detail in Sections
II.B and II.E below on judicial notice and standing.

1 Defendants move to dismiss the complaint for lack of subject matter jurisdiction under Rule
2 12(b)(1) and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted, for
3 lack of standing, failure to exhaust administrative remedies, and immunity. Alternatively,
4 Defendants move for a more definite statement under Rule 12(e) because the complaint is so vague
5 or ambiguous that Defendants cannot reasonably prepare a response.

6 In their reply, Defendants argue that Plaintiffs did not conform to the local rules and
7 requirements for an opposition. Due to this failure, Defendants argue that Plaintiffs have waived
8 their objections to the motion to dismiss. Defendants raise no other arguments in their reply.
9 Defendants are correct that Plaintiffs' opposition does not conform to the local rules and is inartfully
10 drafted in the format of a responsive pleading (e.g., referring to affirmative defenses, etc.). The
11 Court denies Defendants' request, however, because Plaintiffs are proceeding pro se and courts
12 generally interpret pro se pleadings and briefs liberally. *See, e.g., Balistreri v. Pacifica Police*
13 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). However inartfully drafted, the Court is able to
14 understand and infer Plaintiffs' arguments in opposition to Defendants' motion to dismiss.

15 On or about August 30, 2010, Plaintiff Alvarez submitted to the Court three documents: (1)
16 Notice of Reneg of One Plaintiff Youri Ivanovich Bezdenejnykh; (2) Notice of Change of Address;
17 (3) Notice of Unavailability of Plaintiff for the period September 19 through 30, 2010. Because
18 Plaintiffs appear pro se, they may file documents by mail pursuant to the procedures set forth in the
19 Court's Handbook for Litigants Without a Lawyer by mailing the documents, conforming with the
20 requirements of Civil Local Rule 3-4, to the Clerk's Office, United States District Court for the
21 Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102.
22 Plaintiffs did not, however, provide a certificate of service demonstrating that she mailed a copy of
23 these documents to defense counsel as required by Civil Local Rule 5-6. The Court has arranged to
24 have these documents filed on the electronic docket and served electronically to defense counsel.
25 For all future filings, however, the Court admonishes Plaintiffs to follow the Northern District of
26 California's local rules, which are available on the Court's website, and the Federal Rules of Civil
27 Procedure. Failure to comply with the Court's local rules or any applicable Federal Rules may be
28 grounds for imposition of sanctions. Civil L.R. 1-4.

1 In order for Plaintiff Bezdenejnykh to be removed from this action, he must file a notice of
2 withdrawal indicating whether he withdraws all his claims against Defendants. In the absence of
3 such a notice filed by Plaintiff Bezdenejnykh, the Court will address Plaintiff Bezdenejnykh's
4 withdrawal from the action at the next case management conference on a date to be proposed by the
5 parties pursuant to the July 13, 2010 case management order, ¶ 7.

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7 II. DISCUSSION

8 **A. Legal Standards**

9 A complaint must contain a "short and plain statement of the claim showing that the pleader
10 is entitled to relief." Fed. R. Civ. P. 8(a). While Rule 8 "does not require 'detailed factual
11 allegations,'" a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim
12 to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949
13 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). Facial plausibility
14 is established "when the plaintiff pleads factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged." *Id.*

16 In ruling on a motion to dismiss, courts may consider only "the complaint, materials
17 incorporated into the complaint by reference, and matters of which the court may take judicial
18 notice." *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).
19 When matters outside the pleadings are presented on a Rule 12(b)(6) motion and are not excluded by
20 the court, the court must convert the Rule 12(b)(6) motion to a Rule 56 summary judgment motion.
21 Fed. R. Civ. P. 12(d).

22 We construe the complaint liberally because it was drafted by a pro se plaintiff. *Balistreri*,
23 901 F.2d at 699. When granting a motion to dismiss, the court is generally required to provide pro
24 se litigants with "an opportunity to amend the complaint to overcome deficiencies unless it is clear
25 that they cannot be overcome by amendment." *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir.
26 1987). In determining whether amendment would be futile, the court examines whether the
27 complaint could be amended to cure the defect requiring dismissal "without contradicting any of the
28 allegations of [the] original complaint." *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir.

1 1990). Leave to amend should be liberally granted, but an amended complaint cannot allege facts
2 inconsistent with the challenged pleading. *Id.* at 296-97.

3 **1. Dismissal Under 28 U.S.C. § 1915(e)**

4 Once an action is filed IFP, the court “shall dismiss the case *at any time* if the court
5 determines that” the allegation of poverty is untrue, the action is frivolous or malicious, the action
6 fails to state a claim upon which relief may be granted, or the action seeks monetary relief from
7 defendants who are immune from such relief. 28 U.S.C. §1915(e)(2) (emphasis added); *see also*
8 *Denton v. Hernandez*, 504 U.S. 25, 31-32 (1992), *superseded on other grounds as stated in Cruz v.*
9 *Gomez*, 202 F.3d 593, 596 (2nd Cir. 2000); *Franklin v. Murphy*, 745 F.2d 1221, 1226-27 (9th Cir.
10 1984).

11 Dismissal for frivolousness prior to service under section 1915(e) is appropriate where no
12 legal interest is implicated, i.e., where a claim is premised on an indisputably meritless legal theory
13 or is clearly lacking any factual basis. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989), *superseded on*
14 *other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000).

15 **a. Legal Frivolousness**

16 A complaint lacks an arguable basis in law only if controlling authority requires a finding
17 that the facts alleged fail to establish an arguable legal claim. *See Guti v. INS*, 908 F.2d 495, 496
18 (9th Cir. 1990) (per curiam). A complaint filed IFP is not frivolous within the meaning of section
19 1915(e) because it fails to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See Neitzke*,
20 490 U.S. at 329-31. Under Rule 12(b)(6)’s failure-to-state-a-claim standard -- which is designed to
21 streamline litigation by dispensing with needless discovery and fact-finding -- a court may dismiss a
22 claim based on a dispositive issue of law without regard to whether it is based on an outlandish
23 theory or on a close but ultimately unavailing one, whereas under section 1915(e)’s frivolousness
24 standard -- which is intended to discourage baseless lawsuits -- dismissal is proper only if the legal
25 theory or factual contentions lack an arguable basis. *See id.* at 324-28. Allowing courts to dismiss
26 claims filed IFP for failure to state a claim *sua sponte* would deny indigent plaintiffs the practical
27 protections of Rule 12(b)(6), namely, notice of a pending motion to dismiss and an opportunity to
28 amend the complaint before the motion is ruled on. *Id.* at 329-30. Legal frivolity in the section

1 1915(e) context refers to a more limited set of claims than does Rule 12(b)(6), with the
2 understanding that not all unsuccessful claims are frivolous. *Id.* at 329.

3 **b. Factual Frivolousness**

4 Section 1915 also accords judges the unusual power to pierce the veil of the complaint's
5 factual allegations and dismiss those claims whose factual contentions are clearly baseless. *Denton*,
6 504 U.S. at 32. Examples are claims describing fantastic or delusional scenarios. *Id.* at 32-33. To
7 pierce the veil of the complaint's factual allegations means that a court is not bound, as it usually is
8 when making a determination based solely on the pleadings, to accept without question the truth of
9 the plaintiff's allegations. *Id.* at 32. But, this initial assessment of the IFP plaintiff's factual
10 allegations must be weighted in favor of the plaintiff. *Id.* A frivolousness determination cannot
11 serve as a fact-finding process for the resolution of disputed facts. *Id.* A finding of factual
12 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly
13 incredible, whether or not there are judicially noticeable facts available to contradict them. *Id.* But
14 the complaint may not be dismissed simply because the court finds the plaintiff's allegations
15 unlikely or improbable. *Id.* at 33.

16 **2. Rule 12(b)(1) Subject Matter Jurisdiction**

17 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of*
18 *America*, 511 U.S. 375, 377 (1994). They may only adjudicate cases involving a federal question,
19 diversity of citizenship, or where the United States is a party. A federal court has jurisdiction to
20 determine whether it has subject matter jurisdiction. *See United States v. United Mine Workers of*
21 *America*, 330 U.S. 258, 292 n.57 (1947).

22 A complaint must be dismissed if there is a "lack of jurisdiction over the subject matter."
23 Fed. R. Civ. P. 12(b)(1). A jurisdictional challenge under Rule 12(b)(1) may be made either on the
24 face of the pleadings or by presenting extrinsic evidence disputing the truth of the allegations.
25 *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). The plaintiff bears the
26 burden of demonstrating that subject matter jurisdiction exists over the complaint when challenged
27 under Rule 12(b)(1). *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 499 (9th Cir.
28 2001) (per curiam), *overruled on other grounds by Hertz Corp. v. Friend*, --- U.S. ----, 130 S. Ct.

1 1181 (2010). ““A plaintiff suing in a federal court must show in his pleading, affirmatively and
2 distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the
3 court, on having the defect called to its attention or on discovering the same, must dismiss the case,
4 unless the defect [can] be corrected by amendment.”” *Id.* (quoting *Smith v. McCullough*, 270 U.S.
5 456, 459 (1926)).

6 **3. Rule 12(b)(6) Failure to State a Claim**

7 Dismissal under Rule 12(b)(6) is appropriate if the complaint does not give the defendant fair
8 notice of a legally cognizable claim and the grounds on which it rests. *Twombly*, 550 U.S. at 555.
9 Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the lack of
10 sufficient facts alleged under a cognizable legal theory. *Balistreri*, 901 F.2d at 699. In considering
11 whether the complaint is sufficient to state a claim, the court will take all material allegations as true
12 and construe them in the light most favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d
13 896, 898 (9th Cir. 1986). Although the court is generally confined to consideration of the
14 allegations in the pleadings, when the complaint is accompanied by attached documents, such
15 documents are deemed part of the complaint and may be considered in evaluating the merits of a
16 Rule 12(b)(6) motion. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

17 **B. Judicial Notice**

18 Defendants request that the Court take judicial notice of various documents. Courts may
19 take judicial notice of facts that are “either (1) generally known within the territorial jurisdiction of
20 the trial court or (2) capable of accurate and ready determination by resort to sources whose
21 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). In summary, the Court (1) grants
22 Defendants’ request to take judicial notice of Exhibits 1, 6, 12 and 13; (2) denies Defendants’
23 request to take judicial notice of Exhibits 2, 3, 4, 5, 7, 8, 9, and 10;³ and (3) concludes that Exhibit
24 11 is incorporated into the complaint by reference.

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28 ³ The Court notes that its exclusion of documents that are not properly subject to judicial
notice and that are outside the pleadings prevents conversion of this motion to dismiss to a motion for
summary judgment under Rule 12(d).

1 **1. Documents Judicially Noticed**

2 The Court grants Defendants' request to take judicial notice of Exhibits 1, 6, 12 and 13.
3 Exhibit 1 comprises documents regarding the ownership of the property underlying this action at
4 10865 Pine Point Road, California. *See* Defs.' RJD, Ex. 1 (grant deed, deed of trust, quitclaim
5 deeds, notice of pendency of action in state court). These property and court documents are capable
6 of accurate and ready determination. *See* Fed. R. Evid. 201(b).

7 Exhibit 6 is comprised of various codes and ordinances including Cal. Building Code
8 § 105.1, Lake County Zoning Ordinance § 21-9.3, and Lake County Code Chapter 5 §§ 5-14.1 and
9 5-14.4. These provisions are capable of accurate and ready determination. *See* Fed. R. Evid. 201(b).

10 Defendants submitted Exhibits 12 and 13 in response to the Court's order requiring
11 supplemental briefing on Defendants' contention that Defendant Coel is immune from liability under
12 California Government Code Section 820.9. Both Exhibit 12, a minute order of the Board of
13 Supervisors, and Exhibit 13, publicly available documents concerning the Community Development
14 Department, are capable of accurate and ready determination.

15 **2. Denial of Judicial Notice**

16 The Court denies Defendants' request to take judicial notice of Exhibits 2, 3, 4, 8, and 9 as
17 duplicative and/or unnecessary. Exhibit 2 is a copy of the complaint and exhibits attached to the
18 complaint. It is unnecessary for the Court to take judicial notice of the pleadings, which the Court is
19 required to examine in ruling on a motion to dismiss. Exhibit 3 is the parties' stipulation to extend
20 the filing of Defendants' response to the complaint. It is unnecessary for the Court to take judicial
21 notice of this filing. Exhibit 4 is Article 70 § 21-70 of the Lake County Code regarding Reasonable
22 Accommodation, which is already attached and incorporated into the complaint as Exhibit Z to the
23 complaint. Exhibit 8 is the September 2, 2009 Final Notice to Comply addressed to Plaintiffs,
24 which is already attached and incorporated into the complaint as Exhibit E.1 to the complaint.
25 Exhibit 9 is Defendant Brumfield's September 8, 2009 letter to Plaintiffs, which is already attached
26 and incorporated into the complaint as Exhibit J to the complaint.

27 The Court also denies Defendants' request to take judicial notice of Exhibits 5, 7, and 10
28 because these documents are not generally known by the Court and are not capable of accurate and

1 ready determination. *See* Fed. R. Evid. 201(b). Exhibit 5 consists of (1) Defendant Coel's
2 September 22, 2009 internal memorandum to the Board of Supervisors recommending denial of
3 Plaintiffs' fee waiver request; (2) a building inspection notice dated July 28, 2009; (3) various maps;
4 and (4) a September 22, 2009 internal memorandum from the County's Health Services Director to
5 the Board of Supervisors expressing the Director's opposition to Plaintiffs' request to waive
6 environmental health fees. Exhibit 7 consists of Defendants' photographs "evidencing illegal
7 structures and property" at the site of the underlying property. Exhibit 10 is an internal
8 memorandum dated November 6, 2009 from Defendants Coel and Brumfield to the Board of
9 Supervisors regarding the December 1, 2009 nuisance abatement hearing for Plaintiffs. This internal
10 memorandum includes an investigative summary and recommendation for the Board of Supervisors.

11 These documents are not generally known by the Court and are not capable of accurate and
12 ready determination. *See* Fed. R. Evid. 201(b). In addition, Defendants' internal memoranda in
13 Exhibits 5 and 10 constitute hearsay whose reliability and accuracy have not been established. The
14 Court also notes that Defendants simply attached several photographs in Exhibit 7 without providing
15 any foundation, authenticity, or dates for some of the photographs, which further demonstrates the
16 impropriety of taking judicial notice of these photographs. These types of documents, which are
17 outside the pleadings and are not subject to judicial notice, are more properly presented at the
18 summary judgment stage if Defendants establish the documents' admissibility.

19 3. **Incorporation into the Complaint**

20 Exhibit 11 is Defendant Coel's letter to Plaintiffs dated December 23, 2009, responding to
21 Plaintiffs' letter requesting reasonable accommodation which Plaintiffs attached to the complaint as
22 Exhibit I. The Court concludes that Exhibit 11 is incorporated into the complaint by reference
23 where Plaintiffs specifically allege that Defendants failed to provide reasonable accommodation as
24 required by Article 70 § 21-70 of the Lake County Code, attach to the complaint their letter
25 requesting reasonable accommodation, and attach to the complaint Article 70 § 21-70 regarding
26 reasonable accommodation. *See* Compl. ¶ 40, Exs. I & Z.

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1 **C. Dismissal Under 28 U.S.C. § 1915(e)**

2 The complaint does not rise to the level of factual frivolousness to warrant dismissal under
3 § 1915(e) because the facts alleged, while difficult to understand at times, are not clearly baseless,
4 irrational, or wholly incredible. Dismissal for legal frivolousness under § 1915(e) is proper only if
5 the legal theory or factual contentions lack an arguable basis, which is not the case here. *See*
6 *Neitzke*, 490 U.S. at 324-28. Therefore, the complaint is not frivolous to warrant dismissal under
7 § 1915(e).

8 Defendants also argue that the complaint should be dismissed under § 1915(e) because it was
9 brought without good faith and with malice, but provide little support for their argument besides
10 stating that Plaintiffs are “disgruntled” and returned the underlying property back to the seller. The
11 Court concludes that the action is not malicious to warrant dismissal under § 1915(e).

12 **D. Subject Matter Jurisdiction**

13 Defendants, without citing to any legal authority, argue that the complaint should be
14 dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) because Plaintiffs failed to
15 comply with Local Rule 3.8. This rule, which is based on 28 U.S.C. § 2403, requires parties to
16 provide notice when the federal or state government, any agency, officer or employee is not a party
17 to the action and the action challenges the constitutionality of a federal or state statute. Defendants
18 are incorrect. First, the failure to provide notice to the federal or state government under
19 28 U.S.C. § 2403 does not affect whether the court has subject matter jurisdiction over an action.
20 *See, e.g., Tonya K. by Diane K. v. Board of Educ. of City of Chicago*, 847 F.2d 1243, 1247 (7th Cir.
21 1988); *Wallach v. Lieberman*, 366 F.2d 254, 257-58 (2d Cir. 1966); *Kealey Pharmacy & Home Care*
22 *Services, Inc. v. Walgreen Co.*, 761 F.2d 345, 350 n. 8 (7th Cir. 1985). Second, Plaintiffs challenge
23 Lake County’s municipal Building Code, which is not a state “statute” under 28 U.S.C. § 2403 and
24 therefore, notice is not required here. *See International Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 340-41 (1st Cir. 1989). Therefore, Defendants’ subject matter jurisdiction
25 argument fails.

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1 **E. Standing**

2 Defendants argue that the complaint should be dismissed for failure to state a claim upon
3 which relief can be granted under Rule 12(b)(6) because Plaintiffs lack standing. To establish
4 Article III standing Plaintiffs must show the following elements: (1) injury in fact; (2) causation; and
5 (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Defendants argue
6 that Plaintiffs lack standing because neither Plaintiff currently owns the property that is the subject
7 of this action and the remedies sought can only be pursued by the property owner. Plaintiff
8 Bezdenejnykh transferred his interest in the property to Plaintiff Alvarez on March 1, 2010, which
9 occurred before this action was filed on March 12, 2010. *See* Defs.' RJN, Ex. 1. Plaintiff Alvarez
10 then transferred the entire property back to the seller on March 22, 2010. *See* Defs.' RJN, Ex. 1.
11 Plaintiffs conceded at the hearing that they returned the underlying property to the seller. *See* Pls.'
12 Opp. at 5.

13 "Generally stated, federal standing requires an allegation of a present or immediate injury in
14 fact, where the party requesting standing has 'alleged such a personal stake in the outcome of the
15 controversy as to assure that concrete adverseness which sharpens the presentation of issues.'" "
16 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985) (quoting *Baker v. Carr*, 369 U.S. 186,
17 204 (1962)). Article III requires the plaintiff not only to allege a "distinct and palpable injury to
18 himself," but must also "maintain a 'personal stake' in the outcome of the litigation throughout its
19 course." *Gollust v. Mendell*, 501 U.S. 115, 126 (1991). Because Plaintiffs no longer have an
20 ownership interest in the property, they lack standing to pursue the Third or Fifth Causes of Action
21 which allege that Defendants violated a right to the "essential use of the land," and violated
22 Plaintiffs' rights as "land patent" owners. To the extent that the Fourth Cause of Action claims that
23 Defendants violated Plaintiffs' "rights inherent to the Chain of Deeds linking back to the issuance of
24 our Land Grant and no third parties can convert, alter, change, or amend our Deed, or use by deceit,
25 extortion, fear, and threats to amend any Deed, steal any Deed, or convert ownership to public or
26 government use," Plaintiffs lack standing to pursue an inverse condemnation claim because, as they
27 conceded at the hearing on the motion to dismiss, they returned the property to the seller and no
28 longer own the property. Compl. ¶ 60. *See Williams v. Boeing Co.*, 517 F.3d 1120, 1127 (9th Cir.

1 2008) (“In addition to having standing at the outset, a plaintiff’s stake in the litigation must continue
 2 throughout the proceedings, including on appeal.”) (citing *Employers-Teamsters Local Nos. 175 &*
 3 *505 Pension Trust Fund v. Anchor Capital Advisors*, 498 F.3d 920, 923 (9th Cir. 2007)). To the
 4 extent that the Fourth Cause of Action alleges that Defendants deprived Plaintiffs of their building
 5 materials by ordering removal or abatement of those materials, Compl. ¶¶ 3, 60, this claim is
 6 subsumed in the First Cause of Action alleging deprivation of property without due process of law,
 7 discussed below. The Third, Fourth and Fifth Causes of Action are therefore dismissed for lack of
 8 standing, and on the alternative grounds of failure to state a claim as discussed in Section II.F, *infra*.

9 Furthermore, given that Plaintiffs no longer own the underlying property, Plaintiffs’ requests
 10 for equitable relief regarding the underlying property (i.e., that the Court prohibit Defendants from
 11 taking their personal property, demolishing Plaintiffs’ buildings, and engaging in enforcement
 12 activities) are moot. Compl. ¶¶ 66-67 (“Sixth Cause of Action”), 73, 75. The requested relief for a
 13 “cease and desist” order regarding the underlying property and the Sixth Cause of Action are
 14 **dismissed without prejudice**. Paragraphs 66, 67, 73, and 75 are stricken from the complaint.

15 As to the First, Second and Seventh Causes of Action, however, under the liberal Rule
 16 12(b)(6) pleading standard, Plaintiffs have alleged sufficient injury to establish standing on their
 17 claims for due process violations, Fair Housing Act violations and for intentional infliction of
 18 emotional distress. *See Lujan v. Defenders of Wildlife*, 504 U.S. at 561 (“[a]t the pleading stage,
 19 general factual allegations of injury resulting from the defendant’s conduct may suffice” to
 20 demonstrate injury for standing); *Williams v. Boeing Co.*, 517 F.3d at 1127. Plaintiffs allege that
 21 Defendants wrongfully required Plaintiffs to obtain a building permit then refused to issue a building
 22 permit to Plaintiffs and that the refusal to issue the building permit was motivated by racial animus.
 23 Compl. ¶¶ 3, 7. Plaintiffs allege that the relevant provision of California Uniform Building Codes
 24 adopted by the Lake County government is void for vagueness. Compl. ¶¶ 38 - 44. Plaintiffs further
 25 allege that Defendant Board of Supervisors issued an abatement order to remove Plaintiffs’ storage
 26 building and about \$40,000 of building materials. Compl. ¶ 8, 26. Plaintiffs also allege that
 27 Defendants discriminated against them on the basis of race, alleging racial animus, and on the basis
 28 of disability by denying a dwelling due to Plaintiffs’ handicap in violation of the Fair Housing Act

1 and the Fair Housing Amendments Act of 1988. Compl. ¶ 52. *See Budnick v. Town of Carefree*,
2 518 F.3d 1109, 1113 and n.5 (9th Cir. 2008) (“The FHAA forbids discrimination in the sale or rental
3 of housing, which includes making unavailable or denying a dwelling to a buyer or renter ‘because
4 of a handicap of . . . a person residing in or intending to reside in that dwelling after it is sold, rented,
5 or made available.’”) (quoting 42 U.S.C. § 3604(f)(1)(B)). These allegations of injury are sufficient
6 to defeat the motion to dismiss the First, Second and Seventh Causes of Action on the ground of lack
7 of standing.

8 Defendants contend that Plaintiffs lack standing to assert a claim for the loss of their personal
9 property because they fail to show a sufficient causal connection between Defendants’ removal
10 order and Plaintiffs’ decision to place “notices on bulletin boards advertising free lumber and
11 building materials,” Compl. ¶ 8, and to dispose of the materials rather than store them elsewhere.
12 See Defs.’ Suppl. Br. at 3 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 560-61). The Ninth
13 Circuit has held, however, that direct, personal participation is not necessary to establish liability for
14 a constitutional violation. *See Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.1978). Rather, the
15 critical question is whether the violation was reasonably foreseeable. *Wong v. U.S.*, 373 F.3d 952,
16 966 (9th Cir. 2004). Plaintiffs allege that Defendants acted intentionally to interfere with Plaintiffs’
17 rights to build on their property. Compl. ¶ 13, 14. Construed in the light most favorable to
18 Plaintiffs, the allegations of the complaint are sufficient to allege that Plaintiffs’ loss was a
19 reasonably foreseeable result of the abatement order requiring removal of Plaintiffs’ personal
20 property, satisfying the causation requirement for standing.

21 Because Defendants challenge the claims generally for failure to state a claim, as well as on
22 standing grounds, the Court proceeds to address the elements of the cognizable claims.

23 **F. Dismissal Under Rule 12(b)(6) for Failure to State a Claim**

24 **1. Cognizable Claims**

25 As to the First Cause of Action, the allegations of due process violations, liberally construed,
26 state a claim under 42 U.S.C. § 1983 for deprivation of property without due process and state a
27 challenge to Section 106.1 of the Building Code as void for vagueness. “To establish a § 1983
28 claim, a plaintiff must show that an individual acting under the color of state law deprived him of a

1 right, privilege, or immunity protected by the United States Constitution or federal law.” *Levine v.*
 2 *City of Alameda*, 525 F.3d 903, 905 (9th Cir. 2008) (citing *Lopez v. Dept. of Health Servs.*, 939 F.2d
 3 881, 883 (9th Cir.1991)). “To establish a due process violation, a plaintiff must show that he has a
 4 protected property interest under the Due Process Clause and that he was deprived of the property
 5 without receiving the process that he was constitutionally due.” *Id.* (citing *Clements v. Airport*
 6 *Authority of Washoe County*, 69 F.3d 321, 331 (9th Cir.1995)).

7 Section 1983 provides, in pertinent part, that ‘(e)very person who, under
 8 color of any statute of any state . . . , subjects, or causes to be subjected,
 9 any citizen of the United States or other person within the jurisdiction
 10 thereof to the deprivation of any rights, privileges, or immunities secured
 11 by the Constitution and laws, shall be liable to the party injured’ (42
 12 U.S.C. § 1983.) A person ‘subjects’ another to the deprivation of a
 13 constitutional right, within the meaning of section 1983, if he does an
 14 affirmative act, participates in another’s affirmative acts, or omits to
 15 perform an act which he is legally required to do that causes the
 deprivation of which complaint is made. (*Sims v. Adams* (5th Cir. 1976)
 537 F.2d 829.) Moreover, personal participation is not the only predicate
 for section 1983 liability. Anyone who ‘causes’ any citizen to be subjected
 to a constitutional deprivation is also liable. The requisite causal
 connection can be established not only by some kind of direct personal
 participation in the deprivation, but also by setting in motion a series of
 acts by others which the actor knows or reasonably should know would
 cause others to inflict the constitutional injury.

16 *Johnson*, 588 F.2d at 743 -744. Construed in the light most favorable to Plaintiffs, the allegations
 17 are sufficient to state a procedural due process claim based on Defendants wrongfully requiring, then
 18 denying, a building permit and causing Plaintiffs’ loss of personal property allegedly valued at
 19 \$40,000 in building materials and \$42,000 in personal belongings. Compl. ¶ 11. With respect to
 20 causation of Plaintiffs’ alleged injuries, the “critical question is whether it was reasonably
 21 foreseeable” that Defendants’ actions would lead to Plaintiffs’ loss of property. *Wong v. U.S.*, 373
 22 F.3d 952, 966 (9th Cir. 2004).

23 Plaintiffs’ complaint sufficiently alleges a due process claim under Section 1983 against the
 24 Board of Supervisors, but fails to identify what role, if any, the individual defendants Brumfield and
 25 Coel had in the denial of the building permit and in the loss of Plaintiffs’ property. In their
 26 opposition to the motion to dismiss (Doc. No. 30), Plaintiffs allege that Defendant Coel “ordered his
 27 personnel to refuse payment for the final building permit being processed by the Plaintiff, an act that
 28 constituted discrimination by reason of the interference of Defendants . . . and their wrongful and

1 unjustified refusal to grant the building permit being demanded by their own departments.” Opp. at
2 3. Plaintiff may not raise new allegations in opposition to a motion to dismiss, but may amend the
3 complaint properly to allege constitutional violations by the individual defendants, including factual
4 allegations, if any, as to whether the individuals knew or reasonably should have known that
5 Plaintiffs would lose their personal property upon denial of the building permit. *See Wong*, 373 F.3d
6 at 967.

7 The First Cause of Action states a separate claim for relief challenging Section 106.1 of the
8 Lake County Building Code as void for vagueness. To survive a void for vagueness challenge, an
9 ordinance must “give the person of ordinary intelligence a reasonable opportunity to know what is
10 prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).
11 “A law is void for vagueness if persons ‘of common intelligence must necessarily guess at its
12 meaning and differ as to its application. . . .’ The offense to due process lies in both the nature and
13 consequences of vagueness.” *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 290 n.12
14 (1982) (quoting *Aladdin’s Castle, Inc. v. City of Mesquite*, 630 F.2d 1029, 1037 (5th Cir. 1980))
15 (citations omitted). The void for vagueness doctrine protects basic principles of due process. “First,
16 vague laws do not give individuals fair notice of the conduct proscribed. Second, vague laws do not
17 limit the exercise of discretion by law enforcement officials; thus they engender the possibility of
18 arbitrary and discriminatory enforcement. Third, vague laws defeat the intrinsic promise of, and
19 frustrate the essence of, a constitutional regime. We remain ‘a government of laws, and not of
20 men,’ only so long as our laws remain clear.” *Id.* (citations omitted). Liberally construed, Plaintiffs’
21 allegations state a due process challenge to Section 106.1 of the Building Code as unconstitutionally
22 vague as applied to Plaintiffs. *See U.S. v. Other Medicine*, 596 F.3d 677, 682 (9th Cir. 2010)
23 (“[V]agueness challenges to statutes that do not involve First Amendment violations must be
24 examined as applied to the defendant.”) (citations omitted).

25 To the extent that the First Cause of Action purports to state a claim for violation of
26 Plaintiffs’ right to jury trial under the Seventh Amendment, Compl. ¶¶ 17, 32-37, the Seventh
27 Amendment challenge is dismissed for failure to state a claim. Plaintiffs allege that Defendant
28 Board improperly functioned as a court in denying the building permit and issuing a nuisance order,

1 that Plaintiffs were entitled to a jury trial because Defendants' decisions determined Plaintiffs' legal
2 rights, and that Defendants violated Plaintiffs' right to jury trial. *Id.* Plaintiffs also complain that
3 under state court procedures, there is no opportunity for them to present their issues before a jury in
4 state court, alleging further that county governments commonly bribe state judges to influence their
5 decisions. Compl. ¶ 17. The Ninth Circuit has recognized that the Seventh Amendment applies
6 only to proceedings in courts of the United States, and that the creation of administrative remedies
7 may eliminate rights that may have been available in the judicial forum. *Jackson Water Works, Inc.*
8 *v. Public Utilities Com'n of State of Cal.*, 793 F.2d 1090, 1096 (9th Cir. 1986) (citing *Minneapolis &*
9 *St. Louis Railroad Co. v. Bombolis*, 241 U.S. 211, 217 (1916); *Atlas Roofing Co., Inc. v.*
10 *Occupational Safety and Health Review Commission*, 430 U.S. 442, 460 (1977)). *See also City of*
11 *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 719 (1999) ("It is settled law that the
12 Seventh Amendment does not apply" to suits brought in state courts) (citations omitted). Plaintiffs'
13 Seventh Amendment claim, as liberally construed by the Court, is therefore **dismissed** for failure to
14 state a cognizable claim.

15 With respect to the Second Cause of Action, the allegations support a claim under the Fair
16 Housing Act and Fair Housing Amendments Act for race-based discrimination, alleging an anti-
17 Hispanic remark by a member of the Lake County Board of Supervisors. Compl. ¶ 7. *See Budnick*,
18 518 F.3d at 1113-14 (Title VII discrimination analysis is used to examine claims under the FHAA;
19 thus, a plaintiff may establish discrimination in violation of the FHAA under a theory of disparate
20 treatment or disparate impact). To bring a disparate treatment claim, Plaintiffs must allege the
21 elements of a prima facie case: (1) Plaintiffs are members of a protected class; (2) Plaintiffs applied
22 for a building permit and were qualified to receive it; (3) the permit was denied despite Plaintiffs
23 being qualified; and (4) Defendants approved a building permit for a similarly situated party during
24 a period relatively near the time Plaintiffs were denied their permit. *Gamble v. City of Escondido*,
25 104 F.3d 300, 305 (9th Cir. 1997). Liberally construed, the complaint sufficiently alleges a claim of
26 disparate treatment based on race in violation of the Fair Housing Act. Compl. ¶ 7 (alleging denial
27 of building permit based on anti-Hispanic motive and alleging that similarly situated owners in the
28

1 neighborhood have been issued building permits under similar circumstances regarding lack of a
2 public water system and availability of private water system).

3 The complaint does not, however, properly allege discrimination on the basis of disability
4 because it does not identify Plaintiffs' disability, to which Plaintiffs referred at the hearing. Though
5 the complaint attaches a November 24, 2009, letter concerning Plaintiff Bezdenenykh's disabling
6 condition, Compl. Ex. L, Plaintiffs must amend the complaint to allege their disabilities to support a
7 FHAA claim for disability discrimination. The complaint also fails to include factual allegations
8 about specific conduct by individual defendants Coel and Brumfield to support their Fair Housing
9 Act claims. Plaintiffs may amend their complaint properly to allege a disability-based
10 discrimination claim under the FHAA and to include allegations, if any, of discriminatory conduct
11 by individual defendants.

12 The Seventh Cause of Action alleges a state law claim of intentional infliction of emotional
13 distress. "A cause of action for intentional infliction of emotional distress exists when there is (1)
14 extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard
15 of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme
16 emotional distress; and (3) actual and proximate causation of the emotional distress by the
17 defendant's outrageous conduct." *Hughes v. Pair*, 46 Cal.4th 1035, 1050 (2009) (quotations
18 omitted). Liberally construed, the allegations of the complaint are sufficient to state a claim for
19 intentional infliction of emotional distress. The Seventh Cause of Action for intentional infliction of
20 emotional distress is dismissed, however, on the ground of state law immunity, discussed in Section
21 II.H, below.

22 **2. Dismissed Claims**

23 As discussed in Section II.E above, Plaintiffs lack standing to bring their Third through Sixth
24 Causes of Action which are dismissed with prejudice. The Third, Fourth and Fifth Causes of Action
25 are dismissed on the alternative grounds that they fail to state a cognizable claim.

26 **a. Third Cause of Action: "Essential Use of Land"**

27 Plaintiffs allege that Defendants violated Plaintiffs' right to the "essential use of land."
28 Compl. ¶¶ 55-58. Even when liberally interpreting the pleadings given Plaintiffs' pro se status, the

1 Court cannot discern a valid cause of action from Plaintiffs' allegations. Plaintiffs therefore fail to
2 state a claim upon which relief can be granted. To the extent that Plaintiffs challenge Defendants'
3 abatement of the nuisance, this is subsumed within the First Cause of Action. In addition, Plaintiffs
4 allege the following: "We own the property We have complete and absolute dominion in our
5 property; which is the union of the title and the exclusive use of it." Compl. ¶ 55. To the extent that
6 this cause of action is based on Plaintiffs' current ownership of the underlying property, it is also
7 properly dismissed because Plaintiffs concede that they no longer own the underlying property. *See*
8 Defs.' RJN, Ex. 1; Pls.' Opp. at 5. The Third Cause of Action is therefore **dismissed without**
9 **prejudice.**

b. Fourth Cause of Action: “Taking Private Property Without Just Compensation”

12 Plaintiffs' Fourth Cause of Action is entitled "taking private property without just
13 compensation." *See* Compl. ¶¶ 59-61. Plaintiffs allege that "[t]he county is forbidden to order us to
14 repair, remodel, or demolish our own property according to the dictates of any city or county agent."
15 Compl. ¶ 60. The Court construes this cause of action as an inverse condemnation claim under the
16 Fifth Amendment and concludes that Plaintiffs have failed to adequately plead an inverse
17 condemnation claim. *See* Defs.' Mot. at 10-13.

18 The Fifth Amendment provides in relevant part that “private property [shall not] be taken for
19 public use, without just compensation.” As the Supreme Court has frequently noted, “this provision
20 does not prohibit the taking of private property, but instead places a condition on the exercise of that
21 power.” *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 82 U.S.
22 304, 314 (1987) (citations omitted). An as-applied takings claim is not ripe until the property owner
23 has received a “final decision” from the appropriate regulatory entity as to how the challenged law
24 will be applied to the property at issue and further attempted to obtain just compensation for the loss
25 of his or her property through the procedures provided by the state for obtaining such compensation
26 and been denied. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson*
27 *City*, 473 U.S. 172, 192-95 (1985). Although there is no requirement that a plaintiff exhaust
28 administrative remedies before bringing a § 1983 action, *Patsy v. Florida Board of Regents*, 457

1 U.S. 496 (1982), a takings claim brought under § 1983 is not ripe until that landowner has pursued
2 compensation through state remedies unless doing so would be futile. *Hacienda Valley Mobile*
3 *Estates v. City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003) (citing *Williamson County*, 473
4 U.S. at 194-95).

5 Even when viewing the facts in the light most favorable to Plaintiffs, Plaintiffs have failed to
6 plead an inverse condemnation claim because they do not allege that they availed themselves of all
7 the available administrative procedures for just compensation. *Williamson County*, 473 U.S. at 194-
8 95. Therefore, Plaintiffs fail to state a claim upon which relief can be granted and the Fourth Cause
9 of Action is **dismissed without prejudice**.

10 **c. Fifth Cause of Action: “Land Patent Law”**

11 Plaintiffs allege that Defendants violated Plaintiffs’ rights as “land patent” owners of the
12 underlying property. Compl. ¶¶ 63-65. Even when liberally interpreting the pleadings given
13 Plaintiffs’ pro se status, the Court cannot discern a valid cause of action from Plaintiffs’ allegations.
14 Plaintiffs therefore fail to state a claim upon which relief can be granted. In addition, Plaintiffs
15 allege the following: “I am the exclusive holder of the patent to the land and home, which is the
16 subject of this complaint, and thereby have exclusive ownership, right, title, estate and interest in the
17 land and home, which is the subject of this complaint.” Compl. ¶ 64. To the extent that this cause
18 of action is based on Plaintiffs’ current ownership of the underlying property, it is also properly
19 dismissed because Plaintiffs concede that they no longer own the underlying property. *See* Defs.’
20 RJN, Ex. 1; Pls.’ Opp. at 5. The Fifth Cause of Action is **dismissed without prejudice**.

21 **G. Exhaustion - Reasonable Accommodation Regarding Permit Fees**

22 Defendants contend that the complaint should be dismissed because Plaintiffs failed to
23 exhaust their administrative remedies. *See Ritza v. International Longshoremen’s and*
24 *Warehousemen’s Union*, 837 F.2d 365, 368-69 (9th Cir. 1988) (failure to exhaust nonjudicial
25 remedies is properly raised as an unenumerated 12(b) motion). Defendants argue that Plaintiffs
26 failed to exhaust because they did not properly submit a request for reasonable accommodation to
27 waive the permit fees as required by the County. Defs.’ Mot. at 7. After a proper request is
28 submitted, the County makes a decision on the request and the party may also use the appeals

1 process to challenge the decision. *See* Compl., Ex. Z (Article 70 § 21-70 of the Lake County Code
2 regarding Reasonable Accommodation); Defs.’ RJN, Ex. 11; *see also* Defs.’ Mot. at 7.

3 The Court finds that Plaintiffs failed to exhaust their administrative remedies for reasonable
4 accommodation to waive the County’s permit fees because Plaintiffs did not follow the County’s
5 requirements for requesting reasonable accommodation under Article 70 § 21-70 of the Lake County
6 Code, and because Defendants provided Plaintiffs with notice of the deficiency in their request. *See*
7 Compl., Exs. I (Plaintiffs’ letter requesting reasonable accommodation) & Z (Article 70 § 21-70);
8 Defs.’ RJN, Ex. 11 (Defendant Coel’s letter dated Dec. 23, 2009). Because Plaintiffs failed to
9 pursue the available administrative remedies, the Court **dismisses** without prejudice Plaintiffs’ claim
10 for waiver of permit fees and the Fourth Cause of Action for taking without just compensation.

11 *Williamson County*, 473 U.S. at 192-95.

12 Defendants are incorrect in arguing that the failure to exhaust remedies for seeking
13 reasonable accommodation justifies dismissing the *entire* complaint. Although the failure to exhaust
14 administrative remedies regarding Plaintiffs’ request for permit fee waiver bars Plaintiffs’ due
15 process claim for just compensation on those grounds, Plaintiffs are not barred from bringing a claim
16 under the Fair Housing Act for a discriminatory housing practice. *Gladstone, Realtors v. Village of*
17 *Bellwood*, 441 U.S. 91, 103-04 (1979). As the Supreme Court has recognized,

18 § 810 [of the Fair Housing Act, 42 U.S.C. § 3610] is not structured to keep
19 complaints brought under it from reaching the federal courts, or even to
20 assure that the administrative process runs its full course. Section 810(d)
21 appears to give a complainant the right to commence an action in federal
22 court whether or not the Secretary of HUD completes or chooses to pursue
23 conciliation efforts. Thus, a complainant under § 810 may resort to federal
24 court merely because he is dissatisfied with the results or delays of the
25 conciliatory efforts of HUD. The most plausible inference to be drawn from
26 Title VIII is that Congress intended to provide all victims of Title VIII
27 violations two alternative mechanisms by which to seek redress: immediate
28 suit in federal district court, or a simple, inexpensive, informal conciliation
procedure, to be followed by litigation should conciliation efforts fail.

25 *Id.* (footnotes omitted). Thus, the Fair Housing Act does not state an exhaustion requirement for
26 filing an action in federal court: “An aggrieved person may commence a civil action under this
27 subsection *whether or not* a complaint has been filed under section 3610(a) of this title and without
28 regard to the status of any such complaint.” 42 U.S.C.A. § 3613(a)(2) (emphasis added). *See*

1 *Milsap v. Cornerstone Residential Management*, 2010 WL 427436 at *3 (S.D.Fla. Feb. 1, 2010)
2 (“The clear import of the above-referenced statutory language indicates a complainant may file a
3 complaint and exhaust administrative remedies or, alternatively, commence a civil action.”).

4 **H. Immunity**

5 Defendants argue that the complaint should be dismissed under Rule 12(b)(6) because they
6 are entitled to various federal and state law immunities. The Court holds that at the present stage of
7 litigation Defendants are not entitled to immunity under federal law but are entitled to state law
8 immunity against the state law claim for intentional infliction of emotional distress.

9 **1. Federal Immunities**

10 **a. Absolute Judicial Immunity**

11 Defendants contend that they are entitled to absolute immunity for administrative officers
12 performing quasi-judicial acts. Defendants argue that because the conduct challenged by Plaintiffs
13 was “performed by quasi-judicial decision makers,” all Defendants are entitled to this absolute
14 immunity. Defendants appear to argue that Defendant Brumfield was the quasi-judicial decision
15 maker. The Court holds that absolute judicial immunity does not extend to Defendant Brumfield’s
16 determination, as Lake County’s Code Enforcement Manager, of a nuisance.

17 Absolute immunity for judicial and quasi-judicial acts require that the protected conduct “is
18 ‘functionally comparable’ to that of a judge.” *Butz v. Economou*, 438 U.S. 478, 513 (1978). In
19 holding that hearing examiners are entitled to absolute immunity, the Supreme Court reasoned that
20 “the role of the modern federal hearing examiner or administrative law judge [(“ALJ”)] within this
21 framework is ‘functionally comparable’ to that of a judge.” *Id.* (characteristics of the judicial
22 process rendering an ALJ’s role “functionally comparable” to a judge include an adversarial
23 proceeding, a decision-maker insulated from political influence, a decision based on evidence
24 submitted by the parties, and a decision provided to the parties on all of the issues of fact and law).
25 In *Buckles v. King County*, 191 F.3d 1127, 1134 (9th Cir. 1999), the Ninth Circuit held that the
26 three-member regional board created by Washington state law to preside over and rule on petitions
27 challenging a local government entity’s compliance with a state law was a quasi-judicial body
28 entitled to absolute immunity. *Id.* (“The Board adjudicates land use disputes and functions as a

1 quasi-judicial body; its proceedings reflect the same characteristics of the judicial process identified
2 as sufficient in *Butz*.”). Unlike the ALJ in *Butz* or the Board in *Buckles*, Defendant Brumfield’s
3 conduct is not functionally comparable to a judge and the nuisance determination process is not
4 judicial or quasi-judicial. Defendants simply state that Defendant Brumfield performed her duties
5 under an appointed official and that “the acts complained or were performed by quasi-judicial
6 decision makers.” Defs.’ Mot. at 8-9. Defendants do not address how Defendant Brumfield’s
7 conduct is quasi-judicial or argue that the nuisance determination process shares any of the
8 characteristics of the judicial process, such as those identified by the Supreme Court in *Butz*.
9 Therefore, Defendant Brumfield is not entitled to absolute immunity.

10 **b. Qualified Immunity**

11 Alternatively, Defendants also contend that they are entitled to qualified immunity as public
12 officials who are vested with important discretionary responsibilities. Besides providing the general
13 legal standard and making a conclusory statement that they are entitled to qualified immunity,
14 Defendants provide no argument or analysis in support of qualified immunity. They do not identify
15 which Defendants are entitled to qualified immunity, what conduct by whom is at issue, why the
16 conduct did not violate any constitutional right, or whether any constitutional right was clearly
17 established. The Court therefore denies Defendants’ defense of qualified immunity. If the qualified
18 immunity argument is more fully developed, Defendants may raise this defense on summary
19 judgment.

20 **2. State Immunities**

21 Defendants also argue that the complaint should be dismissed under Rule 12(b)(6) because
22 they are entitled to various immunities under state law.⁴ The immunities provided under state law
23 shield Defendants from Plaintiffs’ state law claims, but do not provide immunity against the claims
24 arising under federal law.

25
26
27 ⁴ Defendants’ motion includes a section entitled “Police Power Immunity,” which addresses
28 Plaintiffs’ cause of action entitled “taking private property without just compensation,” Compl. ¶¶ 59-
61, but does not actually address immunity. Defs.’ Mot. at 10-13. This cause of action is addressed in
Section II.F.2 above.

a. Immunity for Individual Defendants

Under California Government Code Section 820.2, public employees are immune from conduct resulting from the exercise of discretion. Section 820.2 provides that “[e]xcept as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” While Section 820.2 is broadly phrased and could conceivably apply to most actions taken by public employees, California courts have limited Section 820.2 immunity to “planning level judgments,” such as basic policy decisions. *McQuirk v. Donnelley*, 189 F.3d 793, 798-800 (9th Cir. 1999) (citing *Johnson v. California*, 69 Cal. 2d 782 (1968); *Caldwell v. Montoya*, 10 Cal. 4th 972 (1995)). Operational level judgments, such as subsequent acts taken to implement policies, are not entitled to Section 820.2 immunity. *Id.* at 799. For example, “low level decisions [by staff] that do not concern the way in which the [public entity] conduct[s] its business” are operational acts that are not entitled to Section 820.2 immunity. *Id.* at 800.

14 California courts have held that individuals such as Defendants Coel and Brumfield are
15 entitled to Section 820.2 immunity in analogous situations. *See Ogborn v. City of Lancaster*, 101
16 Cal. App. 4th 448, 460-61 (2002). In *Ogborn*, the court held that the Director of the Department of
17 Community Development who administered the City’s nuisance abatement program was entitled to
18 Section 820.2 immunity. *Id.* The director “conducted the initial hearing at which [the underlying]
19 property was declared a public nuisance, and he sent a letter to [the property owner] to that effect.”
20 *Id.* at 461. The court held, however, that a public employee who “actively participated in the
21 implementation of the nuisance abatement program” would not be entitled to Section 820.2
22 immunity because his or her actions would constitute operational conduct that is not covered by
23 Section 820.2. *Id.*

24 Here, Defendant Brumfield is the Manager of the County’s Code Enforcement Division and
25 Defendant Coel is the Director of the County’s Community Development Department. *See* Compl.
26 ¶ 29 & Ex. J; Defs.’ RJD, Ex. 11. Plaintiffs do not allege that either Defendant “actively
27 participated in the implementation of the nuisance abatement program.” *See Ogborn*, 101 Cal. App.
28 4th at 461. The complaint only refers to either Defendant in passing and does not actually identify

1 any specific conduct by either Defendant. *See* Compl. ¶ 29 & Ex. J. A letter from Defendant
 2 Brumfield dated September 8, 2009 to Plaintiffs is attached as Exhibit J to the complaint. This letter
 3 indicates that Defendant Brumfield reviewed the County's file regarding the underlying property
 4 and states that the "file shows significant violations" that warranted the posting of a Notice of
 5 Nuisance. Compl., Ex. J. Defendant Coel is referenced in two documents: (1) Plaintiffs' August
 6 12, 2009 letter to Defendant Coel and three other County employees; and (2) Defendant Coel's
 7 December 23, 2009 letter to Plaintiffs. Compl., Ex. Y; Defs.' RJN, Ex. 11. Even when read in the
 8 light most favorable to Plaintiffs, the Court concludes that the complaint and the attached letters do
 9 not identify any specific conduct or active participation by Defendants Brumfield or Coel in the
 10 implementation of the abatement process. The complaint presently alleges only state law claims
 11 against Defendants Brumfield and Coel. The Court therefore holds that Defendants Brumfield and
 12 Coel are entitled to immunity under Section 820.2.

13 Alternatively, Coel and Defendant Board of Supervisors are immune under California
 14 Government Code Section 820.9. Section 820.9 states in relevant part as follows:

15 Members of city councils, mayors, members of boards of supervisors, members of
 16 school boards, members of governing boards of other local public entities,
 17 members of locally appointed boards and commissions, and members of locally
 18 appointed or elected advisory bodies are not vicariously liable for injuries caused
 19 by the act or omission of the public entity or advisory body. Nothing in this section
 20 exonerates an official from liability for injury caused by that individual's own
 21 wrongful conduct. Nothing in this section affects the immunity of any other public
 22 official.

23 Defendants have established that Defendant Coel is appointed and that the Community Development
 24 Department is an advisory body that reports to the Board of Supervisors. Defs.' Suppl. Br. at 5
 25 (Doc. No. 40) and Suppl. RJN Exs. 12 & 13 (Doc. No. 41). With respect to Defendant Coel, as
 26 Director of the Lake County Community Development Department, the California Tort Claims Act
 27 provides immunity to members of locally appointed boards and commissions and members of
 28 locally appointed or elected advisory bodies for injuries caused by public entities. Here, Plaintiffs
 29 allege vicarious liability, rather than any wrongful conduct specific to Defendant Coel.⁵

25 ⁵ Though Plaintiffs refer to specific conduct by Defendant Coel in their opposition, Pls.'
 26 Opp. at 3 (Doc. No. 30), this is insufficient to avoid Defendant Coel's immunity because the Court may
 27 not consider new factual allegations raised for the first time in a party's briefing.

1 Accordingly, Plaintiffs' allegations do not state a claim for relief under California law as to
2 Defendant Coel and Plaintiffs' intentional infliction of emotional distress claims against Defendant
3 Coel are **dismissed**.

4 Section 820.9 does not, however, provide immunity to Defendant Board of Supervisors or
5 Defendant County. On its face, Section 820.9 provides immunity under state law to individual
6 public employees, not the public entity.

7 Furthermore, the immunities provided under state law do not define the scope of immunity
8 for public employees from claims brought under federal law. *Howlett v. Rose*, 496 U.S. 356, 375-77
9 (1990). *See also Buckheit v. Dennis*, --- F.Supp.2d ----, 2010 WL 1998767 at *8-9 (N.D.Cal., May
10 18, 2010). Plaintiffs may, therefore, amend their complaint to include factual allegations, if any,
11 concerning conduct by the individual defendants Brumfield and/or Coel in support of their claims
12 under Section 1983 or the Fair Housing Act and Fair Housing Amendments Act. See *Sosa v.*
13 *Hiraoka*, 920 F.2d 1451, 1460-61 (9th Cir. 1990). The Court does not decide here whether any
14 Defendants would be immune from liability under federal law against any amended claims alleged
15 against the individual defendants.

16 Accordingly, Plaintiffs' allegations do not state a claim for relief under California law as to
17 Defendants Brumfield and Coel, and Plaintiffs' intentional infliction of emotional distress claims as
18 to those Defendants are **dismissed**.

19 **b. Immunity for Public Entity Defendants**

20 State law provides immunity for the Board of Supervisors against liability for the conduct
21 alleged in support of Plaintiffs' claim for intentional infliction of emotional distress: the denial of a
22 building permit and the issuance of a nuisance abatement order.

23 Under California Government Code Section 818.4, public entities are immune for injuries
24 caused by the issuance, denial, suspension, or revocation of any permit, license, certificate, approval,
25 or order. Section 818.4 provides the following:

26 A public entity is not liable for an injury caused by the issuance, denial,
27 suspension or revocation of, or by the failure or refusal to issue, deny, suspend or
28 revoke, any permit, license, certificate, approval, order, or similar authorization
where the public entity or an employee of the public entity is authorized by
enactment to determine whether or not such authorization should be issued,
denied, suspended or revoked.

1 Section 821.2 provides the same immunity for public employees. Cal. Gov. Code § 821.2.

2 Immunity under Sections 818.4 and 821.2 is limited to discretionary activities and the
3 decision to issue a building permit is discretionary. *See Kay v. City of Rancho Palos Verdes*, 504
4 F.3d 803, 810 (9th Cir. 2007) (quoting *Richards v. Dep’t of Alcoholic Beverages Control*, 139 Cal.
5 App. 4th 304, 318 (2006)); *Thompson v. City of Lake Elsinore*, 18 Cal. App. 4th 49, 57-58 (1993).
6 California courts have held that public employees, such as building inspectors, and public entities
7 are entitled to immunity from liability under Sections 818.4 and 821.2 for the denial of a building
8 permit. *See Burns v. City Council*, 31 Cal. App. 3d 999, 1003-1005 (1973) (building inspector
9 entitled to immunity for denial of a building permit). To the extent that Plaintiffs’ state law claims
10 are based on the denial of a building permit, Defendants County and Board are entitled to immunity
11 under Section 818.4 and Defendants Brumfield and Coel are further entitled to immunity under
12 Section 821.2 against claims arising from the denial of a building permit.

13 Defendants are also immune from liability under state law against claims arising from the
14 issuance of the nuisance abatement order. Defendants contend that under California Government
15 Code Section 818.2, public entities are immune for injuries caused by “adopting or failing to adopt
16 an enactment or by failing to enforce any law,” and Section 821 provides the same immunity for
17 public employees. *See* Defs.’ Mot. at 15-17. The immunity provision under state law that is more
18 directly applicable to the nuisance abatement at issue here is Section 821.6 which provides that
19 public employees are “not liable for injury caused by his instituting or prosecuting any judicial or
20 administrative proceeding within the scope of his employment, even if he acts maliciously and
21 without probable cause.” Cal. Gov’t Code § 821.6. This section shields Defendants Brumfield and
22 Coel from liability arising from instituting and prosecuting the nuisance proceedings against
23 Plaintiffs. *Ogborn*, 101 Cal. App. 4th at 462-63. Furthermore, Section 815.2(b) provides that “a
24 public entity is not liable for an injury resulting from an act or omission of an employee of the public
25 entity where the employee is immune from liability.” Cal. Gov’t Code § 815.2. Because
26 Defendants Brumfield and Coel are immune from liability for instituting the nuisance proceedings,
27 Section 815.2 shields the public entity Defendants County and Board from liability. *Ogborn*, 101
28 Cal. App. 4th at 464. These provisions provide immunity to Defendants County and Board, as well

1 as the individual Defendants Brumfield and Coel, from any claims for injuries resulting from
2 enforcing nuisance abatement laws.

3 Defendants further state, without analysis, that “[o]ther immunity provisions (or defenses)”
4 apply in this action, citing Sections 3491, 3494, and 3502 of the California Civil Code. Defs.’ Mot.
5 at 18. Though these provisions address the abatement of a nuisance, none of them provide for
6 immunity for abatement as Defendants argue.

7 Because state law shields Defendants Lake County, Lake County Board of Supervisors,
8 Brumfield and Coel from liability from state law claims arising from the denial of the building
9 permit and the issuance of the nuisance abatement order, Plaintiffs’ state law claim of intentional
10 infliction of emotional distress stated in the Seventh Cause of Action is **dismissed**.

11 **c. Cal. Government Code Section 818: Punitive or Exemplary Damages**

12 Under California Government Code Section 818, “a public entity is not liable for damages
13 awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of
14 example and by way of punishing the defendant.” Defendants argue that Section 818 shields the
15 public entity Defendants, the County and Board of Supervisors, from punitive damages for state law
16 claims. Defs.’ Mot. at 10. Because the Court dismisses the only cognizable state law claim, namely,
17 intentional infliction of emotional distress, this argument is rendered moot.

18 **I. Rule 12(e) Motion for a More Definite Statement**

19 Alternatively, Defendants move for a more definite statement under Rule 12(e) because the
20 complaint is so vague or ambiguous that Defendants cannot reasonably prepare a response. Because
21 the Court has narrowed the claims and dismissed those which fail to state a claim upon which relief
22 can be granted, the Court denies Defendants’ alternative request for a more definite statement.

24 **III. CONCLUSION**

25 The Court **grants in part and denies in part** Defendants’ motion to dismiss. In summary,
26 the Court holds the following:

27 A. **Judicial Notice:** The Court grants in part and denies in part Defendants’ request for
28 judicial notice. The Court (1) grants Defendants’ request to take judicial notice of

1 Exhibits 1, 6, 12 and 13; (2) denies Defendants' request to take judicial notice of
2 Exhibits 2, 3, 4, 5, 7, 8, 9, and 10; and (3) concludes that Exhibit 11 is incorporated
3 into the complaint by reference.

4 B. IFP Dismissal: The complaint does not rise to the level of factual or legal
5 frivolousness and is not malicious to warrant dismissal under 28 U.S.C. § 1915(e) for
6 actions brought *in forma pauperis*.

7 C. Subject Matter Jurisdiction: The Court denies Defendants' argument that the
8 complaint should be dismissed for lack of subject matter jurisdiction because
9 providing notice under Local Rule 3.8 does not affect jurisdiction and notice is not
10 required in this action under Local Rule 3.8.

11 D. Standing: Plaintiffs lack standing to bring their Third, Fourth and Fifth Causes of
12 Action. Plaintiffs' request for relief for a "cease and desist" order and the Sixth
13 Cause of Action are moot and therefore **dismissed without prejudice**. Plaintiffs
14 have standing to bring their due process claims for deprivation of property and void
15 for vagueness challenge to the Building Code provision stated in the First Cause of
16 Action, the race-based discrimination claim under the Fair Housing Act stated in the
17 Second Cause of Action, and the state law claim for intentional infliction of
18 emotional distress in the Seventh Cause of action.

19 E. Other 12(b)(6) Grounds: Plaintiffs state cognizable claims in the First, Second and
20 Seventh Causes of Action. The Fourth Cause of Action for "[t]aking private property
21 without just compensation" is construed as an inverse condemnation claim and is
22 **dismissed without prejudice** for failure to state a claim upon which relief can be
23 granted. The Third Cause of Action for "violation of our right to the essential use of
24 land" and the Fifth Cause of Action for "[v]iolation of our rights under land patent
25 law" are **dismissed without prejudice** for failure to state a claim upon which relief
26 can be granted where the Court cannot discern a valid cause of action from Plaintiffs'
27 allegations.

1 F. Exhaustion: The Court finds that Plaintiffs failed to exhaust their administrative
2 remedies for reasonable accommodation to waive the County's permit fees because
3 Plaintiffs did not follow the requirements for requesting reasonable accommodation.
4 The allegations regarding failure to provide reasonable accommodation in waiver of
5 permit fees may not, therefore, support Plaintiffs' due process claim. The failure to
6 exhaust does not, however, bar a claim brought under the Fair Housing Act or Fair
7 Housing Amendments Act.

8 G. Immunities: Because Defendants are entitled to immunity under state law, the Court
9 **dismisses without prejudice** Plaintiffs' intentional infliction of emotional distress
10 claim against all Defendants. At this juncture, the Court does not find that
11 Defendants are entitled to immunity under federal law.

12 H. More Definite Statement: Because the Court has narrowed the claims and dismissed
13 those which fail to state a claim upon which relief can be granted, the Court denies
14 Defendants' alternative request for a more definite statement.

15 Three causes of action remain and will proceed forward: a claim under Section 1983 for
16 deprivation of personal property in violation of due process as stated in the First Cause of Action; a
17 separate due process claim, also stated in the First Cause of Action, raising a void for vagueness
18 challenge to Section 106.1 of the Uniform Building Code; and a claim of racial discrimination in
19 violation of the Fair Housing Act as stated in Second Cause of Action. Plaintiffs are granted leave
20 to amend their claims for due process violations and Fair Housing Act violations against Defendants
21 Brumfield and Coel; as currently alleged, only Defendants Lake County Board of Supervisors and
22 Lake County remain liable for those claims. Plaintiffs are also granted leave to amend the complaint
23 to allege discrimination based on disability in violation of the Fair Housing Amendments Act.

24 Plaintiffs are ordered to file an amended complaint removing from the original complaint the
25 following: (1) the Third, Fourth, Fifth, Sixth, and Seventh Causes of Action; and (2) paragraphs 73
26 and 75. Plaintiffs must file an amended complaint by October 22, 2010. Defendants must file an
27 answer or otherwise respond to the amended complaint thirty-five (35) days after Plaintiffs file the
28 amended complaint. After the parties have filed an amended complaint and responsive pleading, the

1 Court will set a briefing schedule and hearing date to address the remaining claims on a motion for
2 summary judgment or other dispositive motion.

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4 **IT IS SO ORDERED.**

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6 Dated: September 13, 2010

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NANDOR J. VADAS
United States Magistrate Judge